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October 28, 1983

RP:0032

District Engineer (PODCO-O)
U.S. Army Corps of Engineers
Building 230
Fort Shafter, Hawaii 96858

Dear Sir:

Public Notice PODCO-O 1714-S
Reapplication for Permit for Hydropower Facility
Wainiha River, Kauai

We appreciate receipt of a copy of this notice, concerning which we have the following comments based on discussions with Jacquelin Miller (Environmental Center) and James Parrish (Cooperative Fisheries Unit).

Endangered Species

In one respect the notice is in error. With regard to "Impact on endangered species" (Item 7) it states that "No endangered or threatened wildlife or plants, or their critical habitat, were listed by the applicant or are known to exist in the area." Appendix D to the EIS on the project indicates that Andrew Berger found in the project area the Koloa (Hawaiian duck) which is on the Federal list of endangered species, and this is recognized also in the text of the EIS (page 68).

Impact on oopu

A major concern with the proposed project is its impact on the oopu (gobi). In our review of the draft EIS (Appendix I in final EIS), we took exception to the statement that "the existing diversion weir is not a barrier to migration" of the oopu. There is ample evidence that the existing weir does not completely prevent migration, but the evidence does not indicate that the present weir does not hinder migration, and hence does not indicate that the proposed new upstream diversion weir will not further hinder migration, or that the combination of the two weirs will not seriously affect the distribution of the oopu.

In the draft EIS it was proposed that, to mitigate the effect of the new weir on the oopu, there would be a release of 10 cfs after any 30-day period of no flow over the weir until the next freshet occurred. In place of (not supplementing) this mitigation measure, the final EIS indicated that a continuous flow of at least 1 cfs would be permitted past

the weir through a notch. The mitigation measure proposed in the final EIS (allowance of 1 cfs continous flow past the weir) will have different effects than that proposed in the draft EIS. That the measure last proposed will be more effective than that proposed first is not demonstrated in the EIS. More seriously, the notch is not mentioned in your notice and we see no provision for it in the plan for the weir (sheet 4) accompanying the notice. If no notch is provided that will allow a continous flow of at least 1 cfs, the EIS is not pertinent to the proposed project and the requirements of the State EIS Act have not been satisfied.

We find the notch, its location, and/or its intended effects mentioned five places in the EIS;

(1) In the discussion of the principal project features (p. 10);

(2) In the discussion of streamflows on p. 89.

(3) In the discussion of migratory passage of stream fauna on p. 84;

(4) On p. 1 of McBryde's 4 Aug 83 letter to W.R. Kramer responding to U.S. Fish and Wildlife Services.

(5) On p. 3 of McBryde's 4 Aug 83 response to the Environmental Center.

In these mentions, it is described as:

a) a notch in the weir near the right bark (1), (2), (4), (5);

(b) more specifically as to shape, a shallow notch (4);

(c) more specifically as to type, one that is self regulating (2), (4), (5);

(d) more specifically as to location, in the weir crest (1), (2), or top (5).

The purpose is described as maintaining a continuous flow (1), (2), (3), (4); (5); and more specifically:

(e) a flow in the river (1);

(f) a flow over the weir (3);

(g) a flow concentrated into a narrow area so as to provide a wet path (5); and

(h) a flow of 1 cfs (4).

Neither individually nor collectively do these descriptions provide a clear picture of the weir or its effects. The flow the weir provides may be concentrated in a narrow slot in the weir, and in areas ranging from narrow at bars to wide at pools in the river downstream. What is probably intended is that a flow of at least 1 cfs will be maintained, because even if there were alteration of the width or depth of the notch it would be difficult

to maintain a flow of exactly 1 cfs. However, it is difficult to see how a shallow notch can be self regulating or can maintain a flow of at least 1 cfs when the river flow and the water level upstream of the weir are low. And if the flow is through a notch it cannot be described as occurring over the weir.

We do not suggest that the Corps of Engineers review process be begun again with a revised notice in which the notch is recognized and is effects are described. However, the issue and the measure proposed to minimize the impact of the proposed diversion on the oopu are of such importance that, at least, the Corps should be assured that the notch will be provided and will have its effects, and we suggest strongly that the Fish and Wildlife Service be given the opportunity to review a good description of the notch and analysis of its effects.

Yours truly,

Doak C. Cox
Director

cc: James Parrish
Jacquelin Miller
Randall Hee, McBryde Sugar